

Serial Number 10/646,377  
Docket Number CH920010016US1  
Amendment

**Amendment to the Drawings:**

The attached sheet of drawings for FIG. 2 replaces the previous sheet of drawings for FIG. 2. The replacement sheet is attached immediately after page 14. An annotated sheet showing changes is also attached.

Serial Number 10/646,377  
Docket Number CH920010016US1  
~~Amendment~~

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#### REMARKS

Claims 1-19 remain in the application. The Office Action rejected claims 1-5, 13-15, 18, and 19. The Office Action objected to claims 6-11. Claims 1-19 have been amended. Applicant respectfully requests reconsideration.

#### OBJECTION TO THE SPECIFICATION

The Office Action objected to the specification for certain informalities. Applicant has amended the specification to correct these informalities.

#### OBJECTION TO THE CLAIMS

The Office Action objected to claim 7 because of an informality. Applicant has amended claim 7 to correct this informality.

#### CLAIM REJECTIONS UNDER 35 U.S.C §112

The Office Action rejected claims 2-5, 7, 9, 11-12, and 16-17 under 35 USC §112, second paragraph, as being indefinite. Applicant has therefore amended those claims to make them more definite. Applicant requests reconsideration in light of the amendments.

#### CLAIM REJECTIONS UNDER 35 U.S.C §102

The Office Action rejected claims 1-4, 13-15, and 18-19 under 35 USC §102 as being

Serial Number 10/646,377  
Docket Number CH920010016US1  
Amendment

anticipated by Jensen (U.S. Publication 2002/0107697). Applicant requests reconsideration. Jensen relates to methods and systems for enabling, organizing, marketing, and selling communication or information transmission or direction services for a fee or cost utilizing the Internet or other interactive network. Jensen does not teach or suggest that the sender of email and the sending party both belong to the same group. Claims 1-19 all require that the first user (sender) be in the same email group as the second user (receiver). In Jensen the disclosure discusses a system where fans send emails to stars (the called parties). It is highly unlikely that these fans and stars all belong to the same email group as required by the claims. Moreover, all of the claims also require that the market engine allocate cost based on intrinsic and extrinsic criteria. Jensen does not teach or suggest that either. All that Jensen mentions is "terms and conditions set forth on the Merchant Intermediary's web site ..." (See Para. [0053]) and broad and flexible range of potential terms available (see Para. [0177]).

#### CLAIM REJECTIONS UNDER 35 U.S.C §103

The Office Action rejected claim 5 under 35 USC §103(a) as being unpatentable over Jensen in view of Tanigawa (U.S. Pub. No. 2003/0074255). Applicant requests reconsideration. The Office Action concedes that Jensen does not teach a step of maintaining the credit account included in the database of the central market engine and the credit balance at the client device but contends that it would have been obvious to modify Jensen according to Tanigawa to include the feature of Tanigawa in Jensen to increase users by awarding points to be passed on as money. However, the fact that Tanigawa had the Jensen reference available but did not make such a

Serial Number 10/646,377  
Docket Number CH920010016US1  
Amendment

modification of Jensen is itself objective evidence of non-obviousness. The fact that Tanigawa is not anticipating prior art and that there was a need for increasing the number of users show that there was a need that was not addressed by the prior art. The real world facts establish that Tanigawa failed to combine his invention with Jensen and that the hypothetical combination made by the Office Action is not made by Tanigawa as a failure on the part of Tanigawa to remedy the problem. Long-felt need and prior failure are a useful guide in determining how a person of ordinary skill in the art would have viewed the claimed invention at the time it was made. *Heidelberger Druckmaschinen AG v. Hantscho Comm. Prods., Inc.*, 21 F.3d 1538 (Fed. Cir. 1997). Therefore, the evidence in this case establishes the non-obviousness of the claimed invention.

Applicant thanks the Examiner for the finding of allowability of claims 6-11.

For the foregoing reasons, Applicant respectfully requests entry of the amendment and allowance of the pending claims.

Serial Number 10/646,377  
Docket Number CH920010016US1  
Amendment

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Respectfully submitted,



Michael J. Buchenhorner

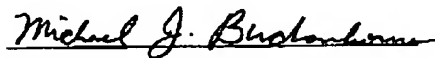
Reg. No. 33,162

Date: December 20, 2006

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**Certificate of Facsimile Transmission**

I hereby certify that this Amendment and Response to Office Action, and any documents referred to as attached therein are being facsimile transmitted on this date, **December 20, 2006**, to the Commissioner for Patents, fax number 571 273-8300.



Michael J. Buchenhorner

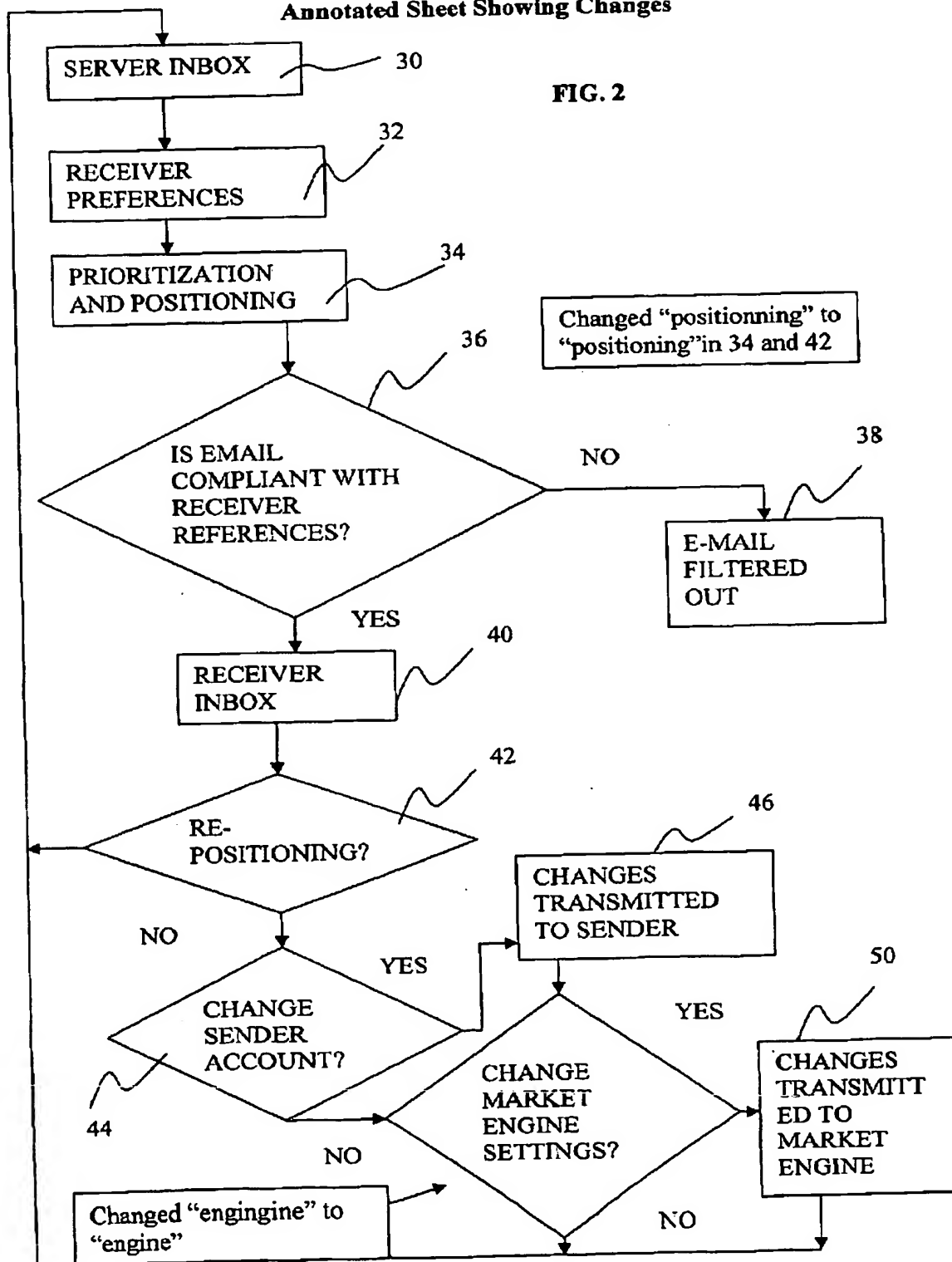
Date: **December 20, 2006**

CH920010016US1

2/2

Annotated Sheet Showing Changes

FIG. 2



CH920010016US1

2/2

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FIG. 2

